THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, the 18th day of July,2007

W.P.No.10756 of 2002

Between:-

Board of Trustees of
Port of Visakhapatnam,
Visakhapatnam … Petitioner

and

Industrial Tribunal-cum-
Labour Court, Visakhapatnam
and another … Respondents

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ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Award dated 25-1-2002 made in I.D.No.144 of 1999 on the file of Industrial Tribunal-cum-Labour Court, Visakhapatnam and to quash the same as arbitrary and illegal.

Heard both sides.

Petitioner is the Management. Respondent No.2 was the workman.

It appears, according to the Management, in the year 1965 when certain manual labour were departmentalised (absorbed) into the regular service of the Management, the 2nd respondent impersonated himself in the place of one Rallapalli Demudu, S/o Yerranna. According to the Management, 2nd respondent is not Rallapalli Demudu, S/o Yerranna, but he is Badireddi Demudu, S/o Simhachalam. This came to light only in the year 1992 when a complaint was made by some third parties alleging that the 2nd respondent impersonated Rallapalli Demudu. It seems, thereafter, an enquiry was conducted by the Revenue Department; of course, behind the back of the 2nd respondent. Basing on the reports of the District Collector, Vizianagaram and the Mandal Revenue Officer, Kottapalli, a regular enquiry was conducted. The Enquiry Officer gave a finding that the 2nd respondent impersonated one Rallapalli Demudu and he is not so. The whole defence of the 2nd respondent was that he had no

parents and he was brought up by his maternal uncle and in the School records as well as in the locality, he is called only as Rallapalli Demudu and not as Badireddi Demudu. Somehow, the Labour Court also agreed with the findings recorded by the Enquiry Officer; however, found that at the time of appointment, the authority has to ascertain the identity or genuineness of a person, but that was not done. Further, the requisite qualification for appointment in the Port Trust at the time of departmentalisation was that one should work in the private Management prior to 1965 and no educational or technical qualification is required to work as a casual labourer for loading and unloading the ships prior to departmentalisation of the Port in the year 1965. The only requisite qualification was physical ability; in other words, must be an able bodied person to perform the work normally as physical labourer. There was no such physical disqualification attached to the 2nd respondent to serve in the Department. Further, the 2nd respondent had rendered 32 long years of unblemished service and there was no other misconduct alleged against him. Thus, in the facts and circumstances of the case, the Labour Court came to the conclusion that the 2nd respondent might have obtained employment by impersonation, but since, he failed to establish that he worked with the private management prior to 1965 etc., felt that denial of back wages etc., would be proper. Apart from that, the 2nd respondent-workman attained the age of superannuation during the pendency of the Writ Petition.

I am of the opinion that the finding recorded by the Labour Court that the respondent-workman had not established that he worked under private management before 1965 i.e. before Departmentalization seems to be unreasonable. As stated above, the

enquiry seems to have been conducted by the revenue authorities was also behind the back of the workman and the whole enquiry is based on the enquiry conducted by the revenue authorities. Further, at this length of time asking the respondent-workman to prove that he worked with the private Management before 1965, which is humanly impossible, is not reasonable. Apart from that, it is an undisputed fact that the 2nd respondent had rendered 32 years of unblemished service with the petitioner and no educational qualifications were required for absorption of the workman in the Department. Under those circumstances, it cannot be said that the Labour Court erred in passing such an Award. May be, the Labour Court is right in directing reinstatement of the 2nd respondent with continuity of service and terminal benefits while exercising its powers under Section 11-A of the Act; however, directing to pay back wages seems to be not in consonance with the language imported in paragraph-31 of the Award and the workman should have been directed to be reinstated without back wages.

Under the above circumstances, the Award of the Labour Court is modified to the effect that the petitioner-Management is directed to reinstate the respondent-workman with continuity of service, but since he attained the age of superannuation and retired from service, he is entitled only for the terminal benefits till the date of retirement, but not entitled for any back wages.

With the above modification, the Writ Petition is disposed of. No order as to costs.

18-7-2007

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